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Attorneys for Defendant,
DR. LAWRENCE P. RUDOLPH

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SAFARI CLUB INTERNATIONAL, and
JOHN WHIPPLE, an Individual,

Plaintiff,

V.

DR. LAWRENCE P. RUDOLPH, and
DOES 1 THROUGH 10 INCLUSIVE,

Defendants.

Case No.: 13-cv-01989 JVS (ANx)

**DEFENDANT'S EX PARTE
APPLICATION TO CONTINUE
DEADLINE TO FILE MOTION
FOR ATTORNEYS' FEES**

Ctrm: 10C
Judge: Hon. James V. Selna

I. INTRODUCTION

On December 23, 2013, this case was initiated when Defendant Lawrence Rudolph (“Dr. Rudolph”) removed the matter from state court. (ECF No. 1). On January 16, 2014, the Court issued an Order denying Plaintiffs’ Application for Preliminary Injunction (ECF No. 27). On February 3, 2014, Plaintiff filed the Verified First Amended Complaint (ECF No. 36). On March 19, 2014, Defendant filed a Motion to Strike Plaintiffs’ Verified First Amended Complaint (“Motion to

1 Strike") (ECF No. 48) as a "strategic lawsuit against public participation" (SLAPP)
 2 that challenges Defendant's protected free speech conduct in violation of California's
 3 anti-SLAPP statute. The Court issued a tentative ruling granting the Special Motion
 4 to Strike and denying the Motion to Dismiss as moot. On May 5, 2014, the Court held
 5 oral argument on the Special Motion to Strike and Motion to Dismiss. (ECF No. 59).
 6 On May 14, 2014, the court issued an Order granting in part and denying in part the
 7 Special Motion to Strike (ECF No. 60) relying on and citing for the first time
 8 Whipple's Declaration previously submitted in support of the Emergency Ex Parte
 9 Motion for Temporary Restraining Order.

10 As part of the Order (ECF No. 60) the Court stated the following in the
 11 conclusion: "Pursuant to Cal. Code. Civ. P. § 425.16(c), Rudolph is entitled to
 12 recover his attorney fees and costs associated with defending against Plaintiffs' claims
 13 for injunctive relief, false light invasion of privacy, intentional infliction of emotion
 14 distress, and negligent infliction of emotional distress." The deadline for filing the
 15 motion for attorneys' fees is Wednesday May 28, 2014.

16 **II. REQUESTED RELIEF**

17 **A. Extension of Deadline to File Motion for Attorneys' Fees**

18 Rudolph intends to file a motion for reconsideration of the Court's order
 19 denying in part and granting in part the special motion to strike (ECF No. 60). A
 20 motion for reconsideration may be construed under either Federal Rule of Civil
 21 Procedure ("FRCP") 59(e) or 60(b). FRCP 59(e) permits the Court to alter or amend
 22 a judgment, while FRCP 60(b) permits the Court, on motion and just cause, to relieve
 23 a party from an order issued. Generally, "Reconsideration is appropriate if the district
 24 court (1) is presented with newly discovered evidence, (2) committed clear error or the
 25 initial decision was manifestly unjust, or (3) if there is an intervening change in
 26 controlling law. . . There may also be other, highly unusual, circumstances warranting
 27 reconsideration." *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)

1 (Internal citation omitted). A motion for reconsideration is also permitted by Local
2 Rule 7-18.

3 Dr. Rudolph intends to file his motion for reconsideration on or before Friday,
4 May 30, 2014, which is within the timeframe for filing the motion.

5 The motion for attorneys' fees is due on Wednesday, May 28, 2014, pursuant to
6 the Court's May 14, 2014 Order (ECF No. 60). If the motion for reconsideration is
7 granted, or if the Court amends its order of May 14, 2014, the scope of the attorneys'
8 fees motion may change. Dr. Rudolph submits that judicial and legal resources will
9 be wasted if he is required to submit his motion for attorneys' fees before the motion
10 for reconsideration is briefed, argued, and decided. Because the motion for
11 reconsideration may impact the attorneys' fees motion, the Court will likely stay, or
12 delay ruling on, the attorneys' fees motion until after the motion for reconsideration is
13 heard. After the court issues its order on the motion for reconsideration, Dr. Rudolph
14 will likely have to either supplement his motion for fees or file a completely different
15 motion. Under either scenario, Rudolph's fee request will increase if the deadline is
16 not continued until after the motion for reconsideration is decided. Therefore, the
17 interests of judicial and legal efficiency dictate that the current deadline for the motion
18 for attorneys' fees should be extended.

19 **B. Ex Parte Notice**

20 In light of the increased cost of preparing serial motions on the same issue, and
21 the unnecessary waste of effort by the Court and the parties, counsel for Dr. Rudolph
22 contacted counsel for Plaintiffs SCI and Whipple and suggested that the parties
23 stipulate to extend the deadline for the attorneys' fees motion until the motion for
24 reconsideration is decided. The discussion regarding the joint request for continuance
25 was conducted during the "meet and confer" process for the attorneys' fees motion
26 and the motion for reconsideration on Thursday, May 22, 2014. On Friday, May 23,
27 at 4:48 p.m., counsel for SCI advised that neither he nor counsel for Whipple would
28 stipulate to continue the deadline for filing the motion.

Counsel for Dr. Rudolph responded to the refusal to cooperate by way of email at 5:36 p.m. on Friday May 23, 2014. At 5:46 p.m. on May 23, counsel for Rudolph called Vince Verde (counsel for SCI) to give notice for the instant ex parte motion to continue the deadline for the attorneys' fees motion. At 5:47 p.m. on May 23, counsel for Rudolph called Joseph Nardulli (counsel for Whipple) to give notice for the instant ex parte motion to continue the deadline for the attorneys' fees motion. Neither attorney was available and thus received a voicemail. A follow up email giving notice was sent at 8:34 p.m. that same evening.

III. CONCLUSION

Dr. Rudolph asks this Court to enter an order continuing the deadline for the filing of the motion for attorneys' fees to 14 days following this Court's order on the motion for reconsideration.

Dated: May 27, 2014

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